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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re LANNY T., a Person Coming
Under the Juvenile Court Law.

B289668
(Los Angeles County
Super. Ct. No. 18CCJP00799)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VILMA T.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Lisa R. Jaskol, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant
County Counsel, and Tracey F. Dodds, Principal Deputy County
Counsel, for Plaintiff and Respondent.

Mother Vilma T. (Mother) appeals from the juvenile court's order declaring her daughter Lanny T. (Lanny, born November 2010) a dependent under Welfare and Institution Code section 300, subdivision (c),¹ and the order removing her from Mother's custody. She contends that the Los Angeles Department of Children and Family Services (Department) and the juvenile court violated her right to equal protection and due process by not making Lanny's Father, Lonnie T. (Father) a co-offending parent. She also contends that substantial evidence does not support the court's jurisdictional and dispositional orders. We disagree, and affirm the orders.

BACKGROUND

Initial Investigation

Although Mother and Father shared joint legal and physical custody of Lanny pursuant to a family law order, the issue of custody was contentious. After receiving two referrals (one in mid-December 2017, the other in early January 2018) regarding emotional abuse and general neglect, a Department social worker interviewed Lanny at school on January 12, 2018. Lanny said Mother wanted her "to tell the truth . . . about the complaints my dad did." Lanny said that Father had struck her a long time ago on her foot and buttocks with his hand because she did not want to get dressed for school. She said he drinks 20 or 10 beers while eating chips at his house. She denied witnessing domestic violence, but said Mother had told her that Father hit her.

¹ All section references are to the Welfare and Institutions Code.

Lanny said that a long time ago Mother had once grabbed Lanny by her neck when she did not want to eat. She denied Mother hurt her or caused a mark. She also reported that Mother hit her in the mouth once when Mother said “something bad” and Lanny said she was going to tell Father.

Lanny said that both her Mother and Father fed her. She denied that Mother called her crazy and explained “my dad and grandma think my mom calls me ‘loca’ because of therapy.” She reported she used to lie to Mother and Mother told her she would go to boot camp. Mother showed her a video where they treated children badly and said that is where Lanny would go if she lied.

On January 17, 2018, the social worker interviewed Father. Father reported that his visitation with Lanny was on the first, third, and fifth weekend of the month. Lanny recently told him that Mother said she would have Lanny arrested when she turned nine if Lanny refused to say what Mother told her to say. Father explained that Wendy, his roommate, had heard Mother say during an exchange at the police station in front of the child, “the therapist says Lanny is crazy.” Father believed Mother was trying to get increased monetary help by establishing Lanny had special needs.

On January 17, 2018, the social worker interviewed Mother at her home. The social worker explained to Mother that she received two law enforcement reports (apparently initiated by Mother) and asked what the reports were about. Mother said that she had told the officers that Lanny had been coming home with small objects or games and Mother did not know where Lanny got them and wondered if she was stealing

them. Mother said she had a new rule: she doesn't allow Lanny to bring home any items, even gifts. Mother has told Lanny that in the future if she continued with bad behavior she would be in trouble with the police.

Mother explained that Kaiser diagnosed Lanny as having anxiety and referred her to an agency. Mother produced paperwork from Kaiser reporting a diagnosis of adjustment disorder with anxiety. Mother stated she did not have Lanny in therapy because Father refused to provide consent.

During the interview, Lanny joined Mother and the social worker at the dining room table. The social worker mentioned that Father reported Lanny was sick and throwing up one night. When she asked for cereal and milk, Father told her she could not eat because of her stomach. The social worker asked Lanny if that was true and Lanny said she remembered throwing up. Lanny had told Mother earlier that Father had not fed her. Mother turned to Lanny and accused her of lying about not being fed. Mother told her that as a consequence for lying, Mother would take away the Lego blocks. Lanny began crying. Mother responded that Lanny knew the rules.

The social worker attempted to intervene, telling Mother it did not seem Lanny was lying, but rather hadn't understood that Father did not give her food because she was sick. Lanny left the table and went to her room.

Mother denied ever grabbing Lanny by the neck or slapping her face. She admitted slapping Lanny on the mouth one time because Lanny told her she did not love her. Mother said she recognized her

actions were wrong and later apologized to Lanny. She denied threatening Lanny with jail, but explained she has shown Lanny videos of children in boot camp. Mother said Lanny sometimes throw things, yells, and behaves badly. Mother tried to correct the behavior by telling her she does not want Lanny to end up in jail. Mother reported she has a friend who has a son in jail and she talked to Lanny about that.

Mother's Request for a Petition

On January 25, 2018, Mother called the social worker and requested a case be opened in dependency court. Mother stated she thought Father was “crazy” and was sexually abusive towards Lanny. She reported Father was sleeping with Lanny in the same bed, but admitted that Lanny had her own bed and chose to sleep with Father. Mother also complained that the paternal grandmother told Lanny mean things and did not feed her. Mother said she wanted a court order to keep Lanny safe. The social worker explained that the Department and law enforcement had assessed Father’s home and deemed it safe. Mother said she did not care what the Department or law enforcement said; she would not give Father visits. The social worker explained to Mother that Mother was preventing the father-child relationship and bonding, which was detrimental to the child.

During the telephone call, Mother surreptitiously put the social worker on speaker phone without the social worker’s knowledge. Mother said, “Do you see what lying does? You’re a liar just like your father, you’re a liar.” The social worker heard Lanny whimper and asked Mother, “Please stop talking to your child like that.” The social

worker asked Mother if she was having this conversation in front of her child and mother said yes. Mother said, “I put you on speaker phone so that she can hear what lying does. This causes stress for me when she lies.” Mother said Father was crazy and now the child “gets to hear what is happening.” The social worker informed Mother that the conversation was not appropriate and to stop sharing adult information with Lanny. Mother refused. The social worker explained that having this conversation in front of the child was emotional abuse and harmful to the child. Mother said she did not care and hung up.

Later, the social worker interviewed Lanny at school, and asked Lanny about an incident in which Mother threw away her backpack. Lanny said that Mother threw away the backpack, which Lanny had gotten at school, because Father gave her cookies and they fell into the backpack. Lanny said she was sad and cried about it.

The Petition

On February 6, 2018, the Department filed a petition under section 300 alleging that both parents failed to protect Lanny by failing to provide life necessities, that Mother failed to protect Lanny by neglecting to obtain treatment for her adjustment disorder, and that Mother caused serious emotional damage to Lanny. The court released Lanny to Father, and gave Mother monitored visits a minimum of two to three times per week with a Department-approved monitor.

Jurisdiction/Disposition Report

On April 12, 2018, the Department submitted its jurisdiction/disposition report. The family law court had ordered that Lanny begin therapy and that Father sign any authorization needed. The family law court also ordered the parents not to discuss the court proceedings with Lanny.²

The social worker reported that although Lanny was reluctant to speak about the allegations, she said that a long time ago Mother grabbed her throat to “make her eat it.” Lanny also said Mother showed her a video of children in jail and said that if Lanny did not listen she would go there. She also disclosed Mother said she (Lanny) was crazy.

Mother reported that in October 2017, Lanny told her she saw black shadows and heard someone in the hallway making a sound like dragging heavy luggage. Lanny also began throwing things at Mother, and said that she wanted to grab a knife and put it in Mother’s stomach. Mother sought mental health intervention, and denied that she failed to seek mental health treatment for Lanny (the Department conceded the point, despite an allegation in the petition to the contrary). According to Mother, after the first therapist was terminated because Kaiser Medi-Cal would not cover the therapy, Mother found another therapist, but Father refused to consent to treatment.

² The Department detailed a number of reports of physical abuse against Father that were determined to be unfounded. An allegation of sexual abuse against Father was also determined to be unfounded.

Mother denied that she ever referred to Lanny using derogatory or demeaning names, or that she called Lanny a liar. Mother admitted she had shown the child a YouTube video of children in boot camp foster home. Mother explained that she simply told Lanny that the children that were seen in the video had misbehaved and therefore were in boot camp. She never told Lanny that she was going to send her to boot camp or to jail.

Mother declared that the Department's reports were false and that the Department was discriminating against her by filing the allegations against her.

Father stated that Lanny's emotional problems derived from Mother's behavior towards the child. Father reported that Mother screamed at Lanny, threw her toys away and told the child that she would have her arrested for lying and misbehaving. Lanny was emotionally affected by Mother's parenting style and was fearful of Mother. Father wanted full custody of Lanny. He did not trust Mother's motives in seeking a diagnosis for Lanny, and believed she was attempting to have Lanny labeled a special needs child in order to obtain money.

Lanny's former therapist reported that Lanny had been in therapy from September 2015 through April 2016. Mother was strict with Lanny during sessions, but appropriate. However, the therapist agreed that Mother sometimes exercised poor judgment, as when she violated numerous orders in the family law case. With regard to Mother's alleged emotional abuse of Lanny, the therapist was surprised, and suggested that the behavior stemmed from her frustrations with the

custody battle in family court. While Lanny was in therapy, neither she nor Mother reported Lanny seeing shadows, hearing luggage being dragged, or mentioning a desire to grab a knife and stab Mother. The therapist believed that this was a classic custody case, in which the parents do not like each other and there is no happy medium.

The Department recommended that the juvenile court find the petition true, take jurisdiction, place Lanny with Father, and order everyone in the family into counseling.

Adjudication Hearing

On April 26, 2018, the adjudication hearing was held. The juvenile court received into evidence the Department's reports. The Department requested that the court dismiss the allegation that Mother failed to obtain mental health treatment for Lanny, but sustain the other counts of the petition. The Department also recommended that Lanny reside with Father.

Mother's attorney argued that the Department had not met its burden of showing that Lanny was suffering or at substantial risk of suffering serious emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior towards self or others.

Lanny's counsel disagreed and argued that the Department had met its burden of proof, and Lanny's counsel requested that the juvenile court sustain the petition. However, Lanny's counsel was concerned that the section 300 petition as pled would leave Father a non-offending parent, as the custody conflict was one source of Lanny's anxiety.

Minor's counsel was also concerned that Father had opined that Lanny did not need services, and he had been the obstacle to Lanny receiving mental health counseling. The juvenile court initially suggested that a dismissal of the section 300 petition would be appropriate, to allow the matter to be handled in family court. Lanny's attorney agreed that dismissal of the petition would be the best option.

The Department responded that there was evidence Mother inflicted severe emotional abuse, as in the conversation the social worker had with Mother, wherein Mother told the child she was a liar, just like Father.

After discussion, the juvenile court found that the Department had met its burden of proof and declared Lanny a child described by section 300, subdivision (c)(3). As sustained, the petition alleged: "The child, Lanny [T.]'s mother, Vilma [T.], emotionally abused the child by frequently yelling at the child, calling the child derogatory, demeaning and disparaging names, speaking to the child in a harsh and abusive manner. On prior occasions, the mother called the child a liar and the mother threatened to have the child arrested if the child lies. On prior occasions, the mother told the child that the child is crazy like the child's father, Lonnie [T.] and blames the child for the family problems. The mother's emotional abuse of the child has resulted in the child exhibiting emotional distress and anxiety. Such ongoing emotional abuse of the child on the part of the mother places the child at substantial risk of suffering serious damage as evidenced by severe anxiety, depression, withdrawal, and aggressive behavior toward herself or others."

The juvenile court then proceeded to a dispositional hearing. Mother requested a Home of Mother order. The Department requested that the juvenile court appoint an expert pursuant to Evidence Code section 730 to assess the family. The juvenile court rejected the Department's request. However, the court ordered the parents to participate in individual counseling. It declared Lanny a dependent of the juvenile court, removed her from Mother's custody, and placed her with Father.

DISCUSSION

I. Discriminatory Treatment

Mother contends that the Department and juvenile court violated her due process and equal protection rights by making only her, and not also Father, an offending parent. She contends that Father contributed to Lanny's emotional distress, and that by making Mother the sole offending parent, Father was virtually assured custody of Lanny.

Although not phrased as such, the only potential cognizable claim Mother might make is one of invidious discriminatory enforcement of the law, a defense generally raised in criminal cases. The record here does not support application of the doctrine. Because a claim of invidious discrimination usually rests on evidence extraneous to the evidence supporting the charge, the claim should be made by a pretrial motion to dismiss, not at trial. (*Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 293, fn. 4.) Here, although Mother complained that she believed that the petition discriminated against her, she made no motion to dismiss based on equal protection, and developed no record.

Therefore, under standard principles of appellate review, the issue is forfeited. (*Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 997.)

Even were we to consider the issue, we would reject it. “[M]ere errors of judgment” do not prove discriminatory enforcement; the complaining party must prove that the charging authority engaged in invidious discrimination. (*Baluyut v. Superior Court* (1996) 12 Cal.4th 826, 834.) “As [the relevant] authorities teach, an equal protection violation does not arise whenever officials “prosecute one and not [another] for the same act” [citation]; instead, the equal protection guarantee simply prohibits prosecuting officials from purposefully and intentionally singling out individuals for disparate treatment on an invidiously discriminatory basis” (*ibid.*), meaning intentional discrimination based on a ““an unjustifiable standard such as race, religion, or other arbitrary classification.”” (*Id.* at p. 835.) Nothing in the record suggests that the Department (or the court) intentionally singled Mother out as the offending parent based on an invidious criterion. Thus, the claim fails.

II. *Jurisdictional Finding*

Mother contends that the evidence does not support jurisdiction under section 300, subdivision (c). We disagree. Of course, we review the record under the substantial evidence test: ““we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact

and credibility are the province of the trial court.” [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Section 300, subdivision (c) provides in relevant part that a child may be declared a dependent if “[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care.”

“The statute thus sanctions intervention by the dependency system in two situations: (1) when parental action or inaction causes the emotional harm, i.e., when parental fault can be shown; and (2) when the child is suffering serious emotional damage due to no parental fault or neglect, but the parent or parents are unable themselves to provide adequate mental health treatment. [¶] In a situation involving parental ‘fault,’ the petitioner must prove three things: (1) the offending parental conduct; (2) causation; and (3) serious emotional harm or the risk thereof, as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior.” (*In re Alexander K.* (1993) 14 Cal.App.4th 549, 557.)

In determining the issue of parental fault, “[i]t is clear from the overall scheme that the parental conduct branch of subdivision (c) seeks to protect against *abusive* behavior that results in severe emotional damage. We are not talking about run-of-the-mill flaws in our parenting styles—we are talking about abusive, neglectful and/or exploitive conduct toward a child which causes any of the serious

symptoms identified in the statute. ‘Abuse’ means ‘[t]o ill-use or maltreat; to injure, wrong, or hurt.’ (I Oxford English Dict. (2d ed. 1989) p. 59.)” (*In re Alexander K.*, *supra*, 14 Cal.App.4th at p. 559.)

In the instant case, substantial evidence supports a finding that Mother’s conduct in disciplining Lanny, taken as a whole, was abusive. Lanny was only eight years old and in the first grade. Yet, for Lanny’s purported lying, Mother threatened to send her to boot camp. She showed Lanny videos in which, as described by Lanny, they treated children badly. Because Lanny occasionally came home from school with small objects or games, Mother suspected Lanny was stealing them. Mother apparently summoned police officers to her home to talk to them about her suspicions. She told Lanny that if she continued being bad, she would be in trouble with the police. Mother reported she had a friend who had a son in jail and she talked to Lanny about him and jail.

According to Father, Lanny told him that Mother said she would have Lanny arrested when she turned nine if she did not say what Mother told her to say. Father also said that his roommate heard Mother say in front of the child, “the therapist says Lanny is crazy.” Lanny also disclosed that Mother said she was crazy.

Lanny described an incident in which Mother threw away her backpack, which Lanny had gotten at school, because Father gave her cookies and they fell into the backpack. Lanny said she was sad and cried about it. Mother admitted slapping Lanny across the mouth on one occasion when Lanny said she did not love Mother.

The social worker heard Mother being abusive towards Lanny. During a telephone call between the social worker and Mother, Mother surreptitiously put the social worker on speaker phone without the social worker's knowledge. Mother said, "Do you see what lying does? You're a liar just like your father, you're a liar." Lanny whimpered and the social worker advised Mother to stop talking to Lanny like that. Mother said, "I put you on speaker phone so that she can hear what lying does. This causes stress for me when she lies." Mother said Father was crazy. Mother said that Lanny needed to hear it. Although the social worker explained that having this conversation in front of Lanny was emotional abuse and harmful to her, Mother said she did not care and hung up.

Taken as a whole, and given Lanny's young age, the evidence supports a finding that Mother's conduct toward Lanny was not a mere "run-of-the-mill flaw[] in . . . parenting style[]" (*In re Alexander K.*, *supra*, 14 Cal.App.4th at p. 559), but rather was emotional mistreatment in the guise of discipline.

The evidence also supports a finding that Mother's conduct caused serious emotional harm to Lanny. Lanny was diagnosed with adjustment disorder with anxiety. Mother herself described Lanny as extremely troubled and in need of therapy. According to Mother, in October 2017, she noticed odd behavior from Lanny. Mother said Lanny began to tell her she would see two black shadows and hear someone in the hallway making a sound as if they were dragging heavy luggage. Lanny also began throwing things at Mother, and said she wanted to grab a knife and put it in Mother's stomach. Lanny's

diagnosis of adjustment disorder with anxiety, and Mother’s description of Lanny’s emotional state, constitute substantial evidence of “serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others.” (§ 300, subd. (c).)

Finally, substantial evidence supports a finding that Mother’s conduct caused, or was a cause of, Lanny’s condition. The juvenile court could reasonably infer that Mother’s consistent pattern of emotionally abusive conduct toward eight-year-old Lanny was a substantial factor in causing Lanny’s emotional distress. In short, substantial evidence supports the jurisdictional finding under section 300, subdivision (c).

Removal From Mother’s Custody

Mother contends that the evidence did not support removing Lanny from her custody. She is mistaken. “We review an order removing a child from parental custody for substantial evidence in a light most favorable to the juvenile court findings. [Citations.]” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969; see *In re A.E.* (2014) 228 Cal.App.4th 820, 826.)

Section 361, subdivision (c)(3) provides in relevant part that “[a] dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [¶] (3) [t]he minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are

no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent." Section 361, subdivision (e), requires the court to "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home." The juvenile court here made such a finding.

Mother contends that there were reasonable alternatives other than removal from Mother's home to protect Lanny, but she does not indicate what those alternatives might be. In any event, there were no other reasonable alternatives. Mother made clear that obtaining her compliance with the Department's suggestions and court's orders would be unlikely. The Department reported the existing family law order granted Mother and Father joint legal and physical custody of Lanny. Father's parenting time was the first, third, and fifth weekend of the month from Saturday at 6:00 a.m. to Wednesday at 5:00 p.m. When the social worker explained to Mother that both she and law enforcement found Father's home to be safe for Lanny, Mother stated she would not let Father visit: "I don't care if I get in trouble, I will not give him visits," even if ordered by the court. In another conversation which occurred in Lanny's hearing, the social worker told Mother that having this conversation in front of the child was emotional abuse and harmful to the child. Mother said she did not care and hung up. There was also evidence that Mother had violated orders of the family law court in the past—Lanny's prior therapist cited Mother's disobedience of those orders as evidence of Mother's poor judgment. On this record, substantial evidence supported the juvenile court's removal order:

given Mother's statements and history of defiance, the juvenile court could reasonably conclude that there was no reasonable alternative to removing Lanny from Mother's custody.

DISPOSITION

The orders are affirmed.

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WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.